

proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 5872) to provide adequate commitment authority for fiscal year 2010 for guaranteed loans that are obligations of the General and Special Risk Insurance Funds of the Department of Housing and Urban Development.

There being no objection, the Senate proceeded to consider the bill.

Ms. LANDRIEU. I ask unanimous consent the bill be read a third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statement be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 5872) was ordered to a third reading, was read the third time, and passed.

INCREASING FLEXIBILITY OF THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT

Ms. LANDRIEU. Mr. President, I ask unanimous consent that the Banking Committee be discharged from further consideration of H.R. 5981, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 5981) to increase flexibility of the Secretary of Housing and Urban Development with respect to the amount of premiums charged for FHA single family housing mortgage insurance, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Ms. LANDRIEU. I ask unanimous consent the bill be read a third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statement related to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 5981) was ordered to a third reading, was read the third time, and passed.

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the Majority Leader, pursuant to Public Law 100-458, Section 114(b)(2)(c), reappoints William F. Winter, of Mississippi, to the Board of Trustees of the John C. Stennis Center for Public Service Training and Development, for a term expiring 2012.

The Chair, on behalf of the Majority Leader pursuant to Public Law 100-458, Section 114(b)(2)(c), appoints the following individual to the Board of Trustees of the John C. Stennis Center for Public Service Training and Development, for a term expiring 2014: Mike

Moore of Mississippi, vice William Cresswell.

Ms. LANDRIEU. Mr. President, I yield the floor.

EXECUTIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to executive session.

NOMINATION OF ELENA KAGAN TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT—Continued

Mr. BROWNBACK. Mr. President, I rise to discuss the nomination of Solicitor General Elena Kagan to the U.S. Supreme Court. Just over a year ago, the Senate considered the nomination of Judge Sonia Sotomayor to the Supreme Court and today we continue the debate on Solicitor General Kagan's. Then, as now, I think it is fully appropriate for us to discuss the judicial philosophy of the nominees being put forward because of the increasing intrusion of the Supreme Court into very contentious issues within the society. If that is the case, then I think judicial philosophy needs to be discussed, and I think that is one that we need to consider in this nominee in Solicitor General Kagan.

The debate and discussion of Solicitor General Kagan's nomination followed a different path from the Sotomayor nomination, but it has led me to the same result: I have too many questions about the nominee's judicial philosophy to permit me to support the nomination to a lifetime appointment to the Supreme Court of the United States.

As I said last year, a nominee's judicial philosophy is a key concern at the heart of the Supreme Court confirmation process. For me, the question is whether a nominee to the Court supports an activist judicial philosophy that would invite the judiciary into all sorts of areas of American life where it has not intruded before, or whether they hold a more deferential view of the Constitution that would limit the role of the courts. It is really that view, of what is the appropriate role of the courts under the Constitution that I think is key, given the more activist role the Court has taken in this society in recent years.

As I noted during the Sotomayor debate, in my view, democracy is wounded when Justices on the high Court, who are unelected, invent constitutional rights and alter the balance of governmental powers in ways that find no support in the text, structure, or history of the Constitution. Unfortunately, in recent years the courts have assumed a more aggressive political role.

In last year's confirmation debate, we talked a lot about whether a nominee's life story and experiences should be a significant factor in assessing that nominee. Whatever the merits of that debate, Judge Sotomayor was nomi-

nated as a Federal judge with a judicial background that offered some clues as to her judicial philosophy. With this nominee, we have comparatively little of written record to evaluate.

Solicitor General Kagan has no previous experience on the bench. If confirmed, she would be the first Supreme Court Justice without prior experience on the bench in almost 40 years. In order to hire anyone for any job, an employer looks at an applicant's past employment history. That is true for private sector jobs and public sector jobs. It is true for the staffs we maintain in the Senate and it is certainly true for Supreme Court nominees. I think most Americans would agree that prior judicial experience would be a good thing for a nominee to the Supreme Court to have. It is not a prerequisite for confirmation. Certainly, we have had Justices in the past who did not have any prior judicial experience. But I would suggest that since Solicitor General Kagan lacks prior experience on the bench, we have an obligation to look even more closely at the professional experience she does have.

There is no question she has an outstanding résumé. Few people in America can say that they have her academic credentials, including an Ivy League law degree, as well as experience teaching at the University of Chicago and as the dean of Harvard Law School. And she has terrific political credentials, including working on the Dukakis for President campaign and as a policy adviser in the Clinton administration. Unfortunately, very little of her résumé pertains to formal legal practice, let alone time on the bench.

So Solicitor General Kagan's experience is not necessarily the experience we would prefer, but it is the experience that we have to go on. And as I look through this professional experience, I see plenty of reasons to be concerned about the philosophy that she would bring to the bench.

In particular, I want to highlight her experience as a policy adviser. From the Presidential campaign trail in 1988 to the Senate Judiciary Committee to the Clinton White House, she has spent a great deal of time working on tough, highly contentious issues. In each of those cases, I think it is clear that she favors the kind of judicial activism that has concerned me throughout my time in the Senate. Her views, and the policies she has supported, endorse a role for the courts that I find very troubling. And let me be clear, whether or not I agree with her views on any particular issue, I am most concerned about the way those views will shape her still-emerging judicial philosophy.

For example, let's take a look at the life issue. As an adviser in the Clinton White House, Ms. Kagan led efforts to preserve partial-birth abortion. Obviously, I disagree with that position, as do most Americans, but that is the role that advisers often play inside the White House. Unfortunately in this case, however, the evidence shows Ms.